

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Joint Petition of CTIA and RCA)	WT Docket 05-288
)	DA 05-2678
)	
Sprint-Nextel Request for Limited Waiver)	WT Docket 05-286
)	DA 05-2577
)	
Alltel Petition for Limited Waiver)	WT Docket 05-287
)	DA 05-2675

To: The Commission

COMMENTS OF APCO

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following comments in response to the Commission’s public notices released on October 7, 2005, seeking comment on the above-captioned petitions and requests.

APCO is the nation’s oldest and largest public safety communications organization. Founded in 1935, APCO’s members are state or local government personnel who manage and operate communications systems for police, fire, EMS and other public safety agencies. APCO has been an active participant throughout this proceeding, focusing on the operational requirements of Public Safety Answering Points (“PSAPs”) and emergency personnel to respond quickly and accurately to 9-1-1 calls. Earlier in this proceeding, APCO noted the operational importance of an aggressive handset replacement timeline in conjunction with the selection of a handset solution for the deployment of Phase II. Our position remains unchanged today. While we realize

there are many factors that influence the ability to meet the 95% goal, we clearly see the need for insistent and assertive action toward that goal.

Section 20.18(g)(1)(v) of the Commission's wireless E9-1-1 rules provides that a carrier using handset-based location technology must "achieve 95 percent penetration of location-capable handsets among its subscribers" by December 31, 2005.¹ The Commission also established a number of interim benchmarks that have since passed and provided ample warnings to carriers of the need to achieve near-universal handset penetration by the end of 2005. During that time, carriers were expected to cease deployment of handsets that are not location-capable and take appropriate steps to encourage the replacement of legacy handsets.

On June 30, 2005, CTIA and the Rural Cellular Association (RCA) submitted a "Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline." More recently, Sprint-Nextel and Alltel have filed requests for waiver. Each of these pleadings are discussed below:

CTIA/ RCA PETITION

CTIA and RCA ask the Commission to suspend the handset penetration rule. APCO strongly opposes such blanket relief from the rule, which would be tantamount to a repeal of Section 20.18(g)(1)(v), despite the fact that some carriers will meet, or come very close to meeting, the requirement. Indeed, Sprint-Nextel acknowledges in its waiver request that its previously separately-owned CDMA network (i.e., "Sprint") expects to

¹ 47 C.F.R. §20.18(g)(1)(v).

meet the 95% benchmark by the December 31 deadline.² Suspending the requirement would send exactly the wrong message to carriers and the public.

As a alternative, CTIA and RCA propose a “framework” for addressing requests for waiver of the 95% penetration rule. APCO does not oppose consideration of case-by-case waivers that are properly supported and demonstrate best efforts to meet the requirement despite factors clearly beyond the control of the entity requesting a waiver. However, some of the criteria proposed by CTIA and RCA do not warrant substantial consideration in the Commission’s analysis.

CTIA and RCA suggest that carriers seeking waivers must demonstrate that they made a “good faith” effort to meet the prior benchmark for deployment of only location-capable handsets. APCO believes that “good faith” is an appropriate standard in this context only if the carrier’s failure to meet the benchmark was clearly beyond its control (*i.e.*, documented inability to obtain location-capable handsets). Carriers must not be “rewarded” for their own delays in deployment of location-capable handsets, which only made their compliance with the 95% benchmark more difficult.

CTIA and RCA also argue throughout their petition that lower-than-expected “churn” should be considered. While not irrelevant, this should not be a significant factor in the waiver analysis, as low churn rates should have led carriers to take more aggressive affirmative steps to encourage existing customers to acquire new handsets. In this regard, CTIA and RCA suggests that subscriber “resistance” to new handsets should

² Discussions with other carriers suggest that they will meet or come within a few percentage points of meeting the requirement.

be considered. The difficulty with that as a factor, however, is that there would seem to be no reliable method of measuring or verifying “resistance.”

The CTIA/RCA Petition also suggests that carriers be entitled to a waiver if they demonstrate “substantial compliance,” defined as at least 85%. However, such a benchmark would effectively change the rule, from 95% to 85%. The actual level of a carrier’s handset penetration should obviously be a factor, but there should be no automatic “pass rate” other than the original requirement in the rules. The FCC should not “grade on a curve.”

CTIA and RCA further suggest that factors such as a carrier’s technology conversion (*e.g.*, from TDMA to GSM) or a technology “glitch” should be considered. Those may well be worthy factors, but need to be considered on a case-by-case basis. Similarly, subscriber reliance on three-watt analog units in rural areas may also be a valid consideration for some carriers, but it too requires case-by-case review to determine the relevance of the factor in each case.

Finally, CTIA and RCA refer to coordination with PSAP deployment schedules, and agreements with PSAPs regarding penetration deadlines. We agree that this could be a factor in some limited cases as it encourages dialogue and cooperation at the local level.

While not discussed by CTIA and RCA, a carrier’s affirmative steps to encourage existing customers to replace legacy handsets should also be a significant factor in the Commission’s review. Such steps might include consumer education in collaboration with public safety regarding the benefits of E9-1-1 capability,³ targeted advertising to subscribers with legacy handsets, and special offers of free or low-cost replacements. To

³ As noted below, Alltel has touted the E9-1-1 benefits of handset replacement to its customers.

the extent waivers are granted, the Commission should require carriers to report on their ongoing efforts to come into compliance within a specified time frame.

SPRINT-NEXTEL

The recently consummated merger of Sprint and Nextel combined two networks with dramatically different levels of deployment of location-capable handsets. While Sprint-Nextel is to be commended for its major strides forward in handset deployment for its CDMA network, regrettably it has failed even to come close to meeting the Commission's requirements for its iDEN network

The Sprint-Nextel CDMA network (*i.e.*, "Sprint") is expected to meet or come very close to meeting the 95% penetration mark. "Sprint" was also one of the first carriers to cease deployment on non-compliant handsets. In contrast, the "Nextel" iDEN network was slow to deploy location-capable handsets, and is way behind other carriers in its penetration levels. Sprint-Nextel does not expect that its iDEN network will reach the required 95% level until December 31, 2007, *two years* after the deadline. Standing alone, these results for the iDEN network are extremely troubling, and require close scrutiny by the Commission.

Sprint-Nextel's stated reasons for non-compliance of its iDEN network include its reliance on a single handset manufacturer, its unique technology, the software design problem that occurred last year, and its predominantly business-oriented customer base. While these may be valid considerations, the very low penetration levels to date for the iDEN network demand close Commission examination. Were the problems beyond Sprint-Nextel's control, and do they fully justify penetration levels well-below that

achieved by other major carriers? The Commission must also be satisfied that Sprint-Nextel has taken *all* reasonable steps to offset the impact of factors beyond its control. In particular, has Sprint-Nextel done all that it could to maximize the level of handset-replacement among existing customers? Regardless whether a waiver is granted, or whether sanctions are imposed, Sprint-Nextel should be subject to an aggressive revised deadline and rigid reporting requirements to ensure full compliance at the earliest possible date.

ALLTEL

We have no specific comments regarding the Alltel request for waiver, other than to note that Alltel has taken affirmative steps to encourage its customers to upgrade their handsets, and has highlighted the E9-1-1 benefits of handset replacement. Other carriers should take similar steps, whether or not they are seeking a waiver of the 95% rule.

CONCLUSION

These and other waivers should be subject to a firm but fair approach designed to encourage universal wireless E9-1-1 capability at the earliest possible date. The Commission must be careful, however, that its fairness towards carriers that have demonstrated best efforts not leave a door open for those carriers who have ignored the requirement or made no meaningful effort to speed deployment and penetration of location-capable handsets.

Respectfully submitted,

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